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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Biennial Regulatory Review)	
2000 Staff Report)	CC Docket No. 00-175
)	
National Exchange)	
Carrier Association, Inc.)	
Petition for Interim Waiver of Section)	
69.602 of the Commission's Rules)	

Petition for Interim Waiver

The National Exchange Carrier Association, Inc. (NECA) hereby requests an interim waiver of Section 69.602 of the Commission's rules. Specifically, NECA requests an exemption from the requirement that all directors stand for election in October 2001.¹ This waiver, if granted, will reduce unnecessary administrative burdens on NECA, its directors, and its member companies. NECA is requesting that the Commission grant this waiver by May 15, 2001, as NECA, its Board of Directors, and its member companies must begin preparation for the October board election following that date.

Background

Section 69.602 of the Commission's rules sets out a number of requirements governing the NECA Board of Directors. Specifically, the rule establishes various "subsets" of NECA companies, establishes the size of the board, and specifies the representation each subset shall have.² Additionally section 69.602 requires that the

¹ NECA specifically requests a waiver of 47 C.F.R. § 69.602(e) and (f), which require an annual election, and 49 C.F.R. § 69.602(i), which requires that a director serve for a term of one year.

² 47 C.F.R. § 69.602 (a) – (c).

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Board include 5 “independent” directors elected to represent all member company subsets.³ Like the directors elected to represent individual subsets, NECA’s independent directors must run for election each year.⁴

In a July 26, 2000 letter, NECA recommended that the Commission change Section 69.602 of the Commission's rules.⁵ NECA proposed the elimination of the annual election requirement for NECA's Board of Directors due to the burdens placed on NECA, its directors, and its member companies. For example, NECA explained that the annual election process incurs costs, such as fees for independent inspectors of elections, printing and mailing ballots, as well as time and expense for the campaign.

NECA is a non-stock membership company incorporated under the laws of Delaware. Although, Delaware General Corporation Law (DGCL) requires an annual election requirement for stock corporations, Section 215 of the DGCL, specifically exempts non-stock corporations from the annual election requirement.⁶ Therefore, eliminating the annual election requirement would permit NECA, like other non-stock corporations, to conduct elections at reasonable intervals to best meet the needs of its membership.

³ 47 C.F.R. § 69.602 (c).

⁴ 47 C.F.R. § 69.602 (e) and (f).

⁵ See Letter to Magalie R. Salas, Secretary, Federal Communications Commission from Richard A. Askoff, Deputy General Counsel, NECA (filed July 26, 2000).

⁶ 8 Del. C. Sec. 215.

In its initial Biennial Regulatory Review 2000 Staff Report, the staff endorsed NECA's recommendation.⁷ In a January 17, 2001 Report, the Commission agreed with the staff's recommendation to review NECA's proposal,⁸ and, therefore, is currently considering a change to its rules.

Waiver Request

NECA respectfully asks that the Commission waive section 69.602 of its rules on an interim basis to exempt NECA from the requirement that all directors stand for election in October 2001 while the Commission continues to assess NECA's proposal.⁹ Grant of this waiver for 2001 would permit NECA to hold an election only to fill board vacancies, or as required under section 69.602(f)(2) of the Commission's rules.¹⁰ The waiver will relieve unnecessary administrative and financial burdens even before the completion of proceedings to eliminate the rule.

⁷ See 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Staff Report*, FCC 00-346 at 17 (rel. Sept. 19, 2000) (Staff Report). On October 10, 2000, NECA filed comments in support of the staff's recommendation. See National Exchange Carrier Association, Inc., *Comments*, CC Docket No. 00-175 (filed Oct. 10, 2000).

⁸ See 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Report*, FCC 00-456 at 23 (rel. Jan. 17, 2001).

⁹ The Commission granted similar interim waivers of section 69.603 of the Commission's rules while it considered NECA's proposal to change the tariff participation notification deadline. See e.g. National Exchange Carrier Association, Inc. Petition for Interim Waiver of Section 69.3 of the Commission's Rules, CC Docket No. 99-320, *Order*, 14 FCC Rcd 20024 (1999) and National Exchange Carrier Association, Inc. Petition for Interim Waiver of Section 69.3 of the Commission's Rules, CC Docket No. 99-316, *Order*, 15 FCC Rcd 19716 (2000).

¹⁰ Section 69.602(f)(2) of the Commission's rules requires contested elections for independent directors every three years.

NECA begins the election process at its May board meeting each year. Therefore, prompt attention to this matter and granting of this waiver prior to May 15th would allow NECA to modify the 2001 election in the best interests of the corporation.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, Inc.

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April 10, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Interim Waiver was served this 10th day of April 2001, by hand delivery or first class mail, to the persons listed below.

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